☐ Expedite
☐ No hearing set
☒ Hearing is set
Date: May 13, 2016
Time: 9:00
Judge/Calendar: Wilson

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

TEAMSTERS LOCAL UNION NO. 117, a labor organization,

Plaintiff,

v.

STATE OF WASHINGTON; CHRISTOPHER LIU, in his capacity as DIRECTOR, DEPARTMENT OF ENTERPRISE SERVICES; DICK MORGAN, in his capacity as SECRETARY, DEPARTMENT OF CORRECTIONS; and EVERGREEN FREEDOM FOUNDATION d/b/a FREEDOM FOUNDATION,

Defendants.

No. 16-2-01547-34

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION AND REQUESTED RELIEF

Teamsters Local Union No. 117 ("Local 117" or "Union") requests that this Court enjoin the State of Washington ("the State"), through the Director of the State Department of Enterprise Services ("DES"), Christopher Liu ("Liu"), and the Secretary of the Washington State Department of Corrections ("DOC"), Dick Morgan ("Morgan"), from providing the Freedom Foundation ("Foundation") with documents sought pursuant to requests it made under the Public Records Act, RCW 42.56 ("PRA"). Local 117 seeks to enjoin the State from providing "[t]he first name, last name, middle initial, birthdate and work email address of every current … employee represented by Teamsters Local 117." DES has indicated it plans to release documents containing this information in its entirety, while DOC will release documents containing all of the information minus the month and year of birth.

Local 117 seeks this relief on two grounds. First, disclosure of the full names of these employees, along with their dates of birth, would expressly violate the exemptions spelled out by the PRA. The disclosure of this information would be highly offensive, and has no legitimate concern to the public. Furthermore, the disclosure of documents revealing the dates of birth together with the employees names are exempt by several of the PRA's exemptions. Additionally, disclosure by the State to the Foundation would also violate the prohibition on disclosure of such lists for commercial purposes, as the Foundation directly plans to "leverage" PRA request victories into "more donations" for its anti-union crusade. Disclosure of such documents is therefore not required, nor is it permitted under the PRA.

Second, disclosure of the email addresses in question would lead to unlawful results under other Washington state laws. While the PRA favors disclosure, no portion of the PRA indicates that disclosure *must* occur even where such disclosure would directly result in the violation of another state law. Here, disclosure would violate Washington public employment collective bargaining laws, which expressly prohibit interference with the right of employees to organize and bargain collectively through representatives of their own choosing. Disclosure would also directly result in the violation of the laws concerning the use of state resources for

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prohibited purposes. These email addresses are a state resource, and disclosure of such a list as sought by the Foundation would result in the dissemination of links to websites to State employees that either directly or indirectly outline the Foundation's support for ballot propositions authored by the Foundation, or for candidates they support that are opposed to public sector unions, which is a direct violation of Washington law.

This Court should therefore issue a preliminary injunction prohibiting the State from disclosing the requested information until the Court can conduct a trial on the merits of Plaintiff's request for permanent injunctive relief.

II. STATEMENT OF FACTS

Local 117 is a labor organization representing 16,000 men and women at 200 employers across Washington State. Declaration of Michelle Woodrow (hereinafter "Woodrow Dec."), ¶ 2. Approximately 60 of these workers are bindery and lithography professionals employed by DES, while 5,400 of these workers are correctional officers and other employees providing services throughout the Washington State corrections system. *Id.* at ¶ 3. The relationship between Local 117 and the State is governed by the terms of their respective collective bargaining agreements as well as applicable statutes, including RCW 41.06 and RCW 41.80. *Id.* at ¶ 4.

The Foundation is a Washington State organization aligned with anti-union interests that are ideologically opposed to the goals of Local 117, including Local 117's mission to improve the wages, benefits and working conditions of employees throughout Washington State. The Foundation regularly publicizes its goal to "weaken," "defund," and "bankrupt" public sector unions and the efforts it takes to attempt to accomplish that goal. Declaration of Dmitri Iglitzin (hereinafter "Iglitzin Dec."), ¶ 2, Ex. A.

The Foundation fundraises from donors, supporters, and the public by advertising its mission to economically cripple unions and by announcing the details of steps it has taken or will take to "defund" and "bankrupt" public sector unions. Iglitzin Dec., ¶¶ 3-4, Exs. B, C. The Foundation's efforts to diminish the membership and financial resources of public-sector unions

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are not restricted to mailings or websites. The Foundation also boasts about its door-to-door outreach to union members to attempt to negatively influence their perspectives about their collective bargaining representatives, and believes that these door-to-door efforts are crucial in obtaining their goals. Iglitzin Dec., ¶¶ 7-9, Exs. F-H. In other words, the Foundation's mission explicitly relies on contacting members or potential members of Local 117 wherever they may be, whether at home or at work, to discredit, disparage, and undermine the Union.

Ultimately, the Foundation's representatives have made it clear that any results obtained from its battle to attack public sector unions is a key piece of "leverage," especially with respect to obtaining contact information for union-represented employees for its outreach activities—leverage to be used to get "more donations" to fund the Foundation. Iglitzin Dec., ¶ 9, Ex. I.

On April 11, 2016, the Office of Financial Management ("OFM") informed Local 117 that on or about April 7, 2016, the Foundation submitted a request for public records to DES. Woodrow Dec., ¶ 5. The request specifically sought "[t]he first name, last name, middle initial, birthdate and work email address of every current Department of Enterprise Services employee represented by Teamsters Local 117." *Id.* at ¶ 6, Ex. A. Local 117 was also made aware that on or about April 6, 2016, Jamie Lund, Senior Policy Analyst for the Foundation, submitted a request for public records to the DOC that was essentially identical in nature, seeking "[t]he first name, last name, middle initial, birthdate and work email address of every current Department of Corrections employee represented by Teamsters Local 117." *Id.* at ¶ 7, Ex. B.

DES and DOC have indicated to Local 117 that they intend to provide the Foundation with the requested documents. Woodrow Dec., ¶ 8. DES plans to disclose the documents in their entirety. *Id.* at ¶ 9, Ex. C. DOC plans to disclose all information minus the month and year from employees' dates of birth. *Id.* at ¶ 10, Ex. D. Local 117 informed both DES and DOC that it objects to the production of these records, and that it would be seeking injunctive relief from this Court. *Id.* at ¶ 11.

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III. STATEMENT OF THE ISSUE

Should this Court issue an order enjoining DES and DOC from disclosing the names, dates of birth, and work email addresses to the Foundation?

IV. EVIDENCE RELIED UPON

Plaintiff relies on the Complaint, this Motion and the declarations and exhibits submitted in support thereof.

V. ARGUMENT

A. PRELIMINARY INJUNCTIVE RELIEF SHOULD BE GRANTED WHERE, AS HERE, THE APPLICANT SHOWS A CLEAR LEGAL OR EQUITABLE RIGHT, A WELL-GROUNDED FEAR OF IMMEDIATE INVASION OF THAT RIGHT, AND THAT THE ACT COMPLAINED OF WILL RESULT IN ACTUAL AND SUBSTANTIAL INJURY.

It is well established that this Court has the inherent authority to issue an injunction preserving the *status quo ante* until a matter can be fully decided on its merits. CR 65(b); *see also*, RCW 7.40.010. In order to obtain an injunction, a plaintiff must show that: (1) he has a clear legal or equitable right; (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him. *Kucera v. State, Dept. of Transportation*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000). These criteria are evaluated by balancing the relative interests of the parties, and if appropriate, the interests of the public. *Id*.

> At a preliminary injunction hearing, the plaintiff need not prove and the trial court does not reach or resolve the merits of the issues underlying these above three requirements for injunctive relief. Rather, the trial court considers only the *likelihood* that the plaintiff will ultimately prevail at a trial on the merits by establishing that he has a clear legal or equitable right, that he reasonably fears will be invaded by the requested disclosure, resulting in substantial harm.

Nw. Gas Ass'n v. Wash. Utilities and Transp. Comm'n, 141 Wn. App. 98, 116, 168 P.3d 443 (2007), *rev. denied* 163 Wn.2d 1049, 187 P.3d 750 (2008) (emphasis in original); *see also Ameriquest Mortgage Co. v. State Att'y Gen.*, 148 Wn. App. 145, 155, 199 P.3d 468 (2009), *aff'd*

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on other grounds 170 Wn.2d 418, 241 P.3d 1245 (2010) ("a *likelihood* of prevailing at a trial on the merits" is the proper standard of proof at preliminary injunction stage) (emphasis in original).

A third party is entitled to a permanent injunction pursuant to RCW 42.56.540 to prevent an agency from disclosing records where, as here, it establishes that "(1) that the record in question specifically pertains to that party, (2) that an exemption applies, and (3) that the disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital government function." *Ameriquest Mortgage Co. v. Office of Attorney Gen. of Wash.*, 177 Wn.2d 467, 487, 300 P.3d 799 (2013).

The requested information specifically pertains to Local 117 because the employees it represents have private information placed at risk by this request, just as the collective bargaining relationship between it and the employees here is placed at risk. Additionally, several exemptions to disclosure apply to the information requested, as explained *infra*. Besides these exemptions, the disclosure would constitute two separate violations of different Washington State Laws under this specific set of circumstances—both an interference violation under state collective bargaining statutes, and a violation of the laws governing the use of state resources—and therefore cannot be provided. Finally, the disclosure would not be in the public interest, as it would substantially and irreparably harm Local 117 and its members.

B. LOCAL 117 HAS A CLEAR LEGAL OR EQUITABLE RIGHT TO THE RELIEF SOUGHT HERE.

A party seeking a preliminary injunction on the basis of a PRA exemption need only establish a *likelihood* of prevailing on the merits as to whether a PRA exception applies. *Northwest Gas*, 141 Wn. App. at 114-15; *Ameriquest*, 148 Wn. App. at 156. Here, Local 117 is likely to prevail on the merits, as explained *infra*, and therefore has a clear legal and equitable right to an injunction in this case.

1. Disclosure Would Violate The PRA, As The Information Is Specifically Exempted From Disclosure.

a. Privacy and Personal Information Exemptions.

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The PRA contains exemptions that protect certain records from disclosure, and require redaction of certain information if the remainder of the document is disclosable. *See* RCW 42.56.070, .230–.480, and .600–.610. The exemptions are intended to "exempt from public inspection those categories of public records most capable of causing substantial damage to the ***privacy rights*** of citizens or damage to vital functions of government." *Ameriquest Mortgage Co.*, 177 Wn.2d at 486 (emphasis added) (internal citation omitted). A person's "right to privacy," "right of privacy," "privacy," or "personal privacy" is invaded or violated if disclosure of information about the person would be highly offensive to a reasonable person, and is not of legitimate concern to the public. RCW 42.56.050. Thus, information relating to or affecting a particular individual, information associated with private concerns, or information that is not public or general constitutes personal information. *Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405*, 164 Wn.2d 199, 211, 189 P.3d 139, 145 (2008).

Specifically, documents listing the full names *and* dates of birth of state employees are exempt from disclosure under RCW 42.56.230(3) and (7)(a).[1] These sections read, in part:

> The following personal information is exempt from public inspection and copying under this chapter:
> …(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;
> …
> (7)(a) Any record used to prove ***identity, age***, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

Id. (emphasis added). *See also City of Lakewood v. Koenig*, 182 Wn.2d 87, 92, 343 P.3d 335, 337 (2014) (upholding City's redaction of dates of birth under RCW 42.56.230 from documents requested, as "the date of birth together with a name has the potential to link a particular

[1] DOC has stated it will not provide the full date of birth for these employees, pursuant to the exemption under RCW 42.56.250(8), which reads that "month and year of birth in the personnel files of employees and workers of criminal justice agencies" are "exempt" under RCW 42.56.

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individual with a particular identity thus creating the potential to endanger an individual's life, physical safety or property.").

Here, even if the names of these employees in conjunction with their dates of birth were not exempt—which they are, as outlined above—the idea of an employer providing a list of employees' full names, along with any portion of their dates of birth, to an organization that intends to track employees down at their homes would be highly offensive to a reasonable person, as such information can certainly be used to track down home addresses. Furthermore, the dates of birth (even just the day[2]) of these employees are not of legitimate concern to the public. A decision by the State to comply with the Foundation's request with regard to these items would clearly contravene the privacy provisions of the PRA.

b. Commercial Purpose Exemption.

The entirety of the requested documentation, if disclosed, would also violate the PRA as the purpose behind the request is for a commercial purpose, which is prohibited under RCW 42.56.070(9), which reads, in relevant part:

> This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law…

Id. In contrast to the various exemptions set forth in RCW 42.56.210-.480 and RCW 42.56.600-.610 of the PRA from the otherwise broad mandate that the government release public records, RCW 42.56.070(9) establishes a categorical *prohibition* against disclosing lists of individuals ("agencies…shall not do so…") where such list is "requested for commercial purposes." RCW 42.56.070(9). Commercial purposes include "a business activity by any form of business

[2] Even though DOC will only be providing documents containing an employee's *day* of birth, such information can still be used to identify an individual when used in conjunction with a full name.

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enterprise intended to generate revenue or financial benefit." *SEIU Healthcare 775NW v. State of Washington*, 2016 WL 1447304, --- P.3d ---- (2016). [3]

Because RCW 42.56.070(9) absolutely prohibits disclosure and does not merely exempt certain documents from an affirmative obligation to disclose, the statute cannot be read within the usual narrow construction framework that applies to PRA exemptions generally. RCW 42.56.030 ("exemptions" are to be "narrowly construed"). The PRA elsewhere distinguishes between "exemptions" and "prohibitions," indicating the terms have different meanings. *E.g.*, RCW 42.56.070(1) ("Each agency…shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions…of this section, this chapter, or other statute which ***exempts or prohibits*** disclosure of specific information or records."). The use of different terms within the same statute implicates the "basic rule of statutory construction that the legislature intends different terms used within an individual statute to have different meanings." *State v. Tracer*, 173 Wn.2d 708, 718, 272 P.3d 199 (2012).

Here, the Foundation's anticipated benefits from obtaining this information cannot be considered "remote and ephemeral" or "indirect." While it is unclear *exactly* what the Foundation will say in its initial emails to Local 117-represented employees, such an email *will* invariably link them to the Foundation's website, which *does* request donations. Iglitzin Dec., ¶ 4, Ex. C. Furthermore, its representatives have specifically stated publicly that it will "leverage" the results of getting lists of public sector union members *directly* into getting "more donations" to fund the Foundation's anti-union crusade. *Id.* at ¶ 10, Ex. I.

Furthermore, the State has not even attempted to fulfill their affirmative burden under RCW 42.56.070(9) to avoid disclosing lists of individuals to a party intending to use the list for

[3] In *SEIU Healthcare 775NW*, the Court of Appeals held that the Foundation's request of a list of SEIU 775-represented employees was *not* exempt under RCW 42.56's commercial purposes exemption, "expressly based on the Foundation's repeated representations" that it was not making use of the list to attempt to solicit money or financial support from the individual providers, and that the connection between the request and the Foundation's fundraising was "too attenuated" in the record before it. However, the Court did *not* consider such statements made by the Foundation about directly "leverag[ing]" these requests to get "more donations" in making its determination, and therefore review of the commercial purposes exemption is appropriate here.

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commercial purposes. An agency must investigate when it has some indication that the list might be used for commercial purposes. *SEIU Healthcare 775NW* at *13, ¶ 69. Here, the State is completely aware of the intent behind the request, at least through conversations with the Union. Disclosure of the list under these circumstances cannot be permitted to occur.

2. No Part Of The PRA Or Its Caselaw *Requires* An Agency To Disclose Information Even When Such Disclosure Will Violate Other State Laws, As The Disclosure In This Case Will Do.

Disclosure, while favored, is *not* so favored as to exclude compliance with other laws, especially where those other laws prohibit the result that disclosure of the requested documents in this case will achieve. Instead, RCW 42.56.070(1) "incorporates into the Act other statutes which exempt or prohibit disclosure of specific information or records," *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 261, 884 P.2d 592 (1994) ("*PAWS*"), because the PRA seeks to look to the interests protected by other statutes when evaluating disclosure.[4]

In so doing, courts look to the other statutes to determine whether the statute *operates* as a prohibition against such disclosure. *Id.* at 262 (relying on part of Uniform Trade Secrets Act providing that "affirmative acts to protect a trade secret may be compelled" to hold that law barred disclosure, and also holding that researchers may seek to enjoin the release of certain portions of public records if the nondisclosure of those portions is necessary to prevent harassment as defined under the anti-harassment statute); *Hangartner v. City of Seattle*, 151 Wn.2d 439, 453, 90 P.3d 26 (2004) (holding the attorney-client privilege at RCW 5.60.060(2)(a) is an "other statute" prohibiting disclosure); *Ameriquest Mortg. Co. v. Office of Att'y Gen.*, 170 Wn.2d 418, 440, 241 P.3d 1245 (2010) (federal privacy laws operated to prohibit disclosure).[5]

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[4] The Washington Supreme Court decision *John Doe A. v. Wash. State Patrol*, No. 90413-8 (Apr. 7, 2016) does not require a different conclusion. There, the Court stated that an "other statute" must "expressly prohibit or exempt the release of records," it indicates that such exemptions exist where "courts have identified a legislative intent to protect a particular interest or value." Here, as described *infra*, such interests or values—protecting the bargaining relationship as well as protecting state resources from misuse—clearly exist and favor nondisclosure.

[5] *White v. Clark*, 188 Wn. App. 622, 630-31, 354 P.3d 38 (2015), supports this interpretation of the "other statute" provision. After stating that "[the] other statute" exemption applies only if that statute explicitly identifies an exemption," *id.* at 630-31, the Court proceeded to find the "other statute" provision met by combining article VI, section 6 of the Washington Constitution, multiple sections of Title 29A RCW, and secretary of state regulations

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a. State Collective Bargaining Statutes Prohibit Interference Between Employees And Their Collective Bargaining Representatives—Interference That Would Occur If The Documents Requested Are Disclosed.

RCW 41.80.110(1)(a) establishes that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by RCW 41.80, as listed in RCW 41.80.050:

> Except as may be specifically limited by this chapter, employees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining ***free from interference***, restraint, or coercion.

An interference violation exists when an employee could reasonably perceive the employer's statements or actions as a threat of reprisal or force or promise of benefit associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A, 1996 WL 768490 (PECB, 1996). The union is not required to show how an employer intended or was motivated to interfere with collective bargaining rights. *City of Tacoma*, Decision 6793-A, 2000 WL 194131 (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced or that the employer had union animus. *Id*.[6]

A finding that interference has occurred is not based on the actual feelings of a particular employee, but on whether a typical employee in those circumstances could reasonably see the employer's actions as discouraging union activity. *Snohomish County*, Decision 9291-A, 2007 WL 768751 (PECB, 2007). "If the setting, the conditions, the methods, or other probative context can be appraised, in reasonable probability, as having the effect of restraining or coercing the employees in the exercise of such rights, then his activity on the part of the employer is violative of [Section 8(a)(1) of the Act." *Taylor Rose Mfg. Corp*., 205 NLRB 262, 265 (1973),

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authorized by statute, which the Court held together operated to ensure ballot security and secrecy and therefore operated to prohibit disclosure of digital copies of election ballots.

[6] The Public Employment Relations Commission and the state courts have concurrent jurisdiction over unfair labor practice complaints. *Yakima v. Fire Fighters*, 117 Wn.2d 655, 674-75, 818 P.2d 1076 (1991); *State ex rel. Graham v. Northshore Sch. Dist. 417*, 99 Wn.2d 232, 240, 662 P.2d 38 (1983).

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enforcement granted NLRB v. Taylor-Rose Mfg. Corp., 493 F.2d 1398 (2d Cir. 1974).[7]

Where a typical employee in the same circumstances could reasonably see the employer's actions as discouraging his or her union activities, communications constitute unlawful interference in violation of RCW 41.80. "Even if non-coercive in tone, a communication may be unlawful if it has the effect of undermining a union." *Grant County Public Hospital District 1*, Decision 8378-A, 2004 WL 2507347 (PECB, 2004).

> Any balancing of the employer's rights of free speech and the rights of employees to be free from coercion, restraint, and interference "must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might more readily be dismissed by a more disinterested ear."

Grant County Public Hospital District 1, Decision 8378-A (quoting *Town of Granite Falls*, Decision 2692, 1987 WL 383191 (PECB, 1987)) (holding supervisor's statements during a staff meeting to bargaining unit members constituted unlawful interference). In *Pasco Housing Authority*, an employer's memo to its bargaining unit undermining the Union and promoting decertification was found to be coercive in tone. It "discredits and undermines the union" without giving the employees a full explanation of their statutory rights. *Id.* In an environment where no decertification petition had been filed, these statements were coercive, and employees could reasonably have perceived them as an attempt to undermine the union. *Id.*

Here, the same effect would occur when a reasonable employee learns that her employer provided her email address to an organization that is now emailing her and purportedly providing her with information that the Union allegedly did not provide—information undermining the Union and its role in representing the employees, and continuing such disparagement as

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[7] RCW 41.56 and 41.80 are substantially similar to the National Labor Relations Act, 29 U.S.C. § 151 *et seq*. ("NLRA" or "Act"). *See, e.g., Lewis County PUD*, Decision 7277-A, 2002 WL 65627 (PECB, 2002). The "interference" prohibition closely parallels the "interference" prohibition found in Section 8(a)(1) of the NLRA. With the approval of the Supreme Court of the State of Washington, PERC considers the precedents developed by the National Labor Relations Board ("Board") and the federal courts under the Act in construing this state's collective bargaining statutes in cases where local precedent is limited or lacking, and the statutes are similar. *City of Bellevue*, Decision 5391-C, 1997 WL 810871 (PECB, 1997).

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comparing its operating practices to the mafia, Iglitzin Dec. ¶ 6, Ex. E—all under the apparent blessing of her employer.

Additionally, an employer may not simply use a third party to interfere with employee organizing and representational rights and escape a violation of RCW 41.80 or the Act. For example, in *Maidsville Coal Co.*, the employer was found to have violated the NLRA when it used a third party to threaten employees with reprisal if they continued to engage in activities on behalf of the union. *Maidsville Coal Co.*, 257 NLRB 1106, 1136 (1981), *enf. denied on other grounds by NLRB v. Maidsville Coal Co.*, 693 F.2d 1119 (4th Cir. 1983).

The unlawful conduct need not have been committed by the employee's employer for it to constitute an "interference" ULP. In *Fabric Services, Inc.*, 190 NLRB 540, 542 (1971), the employer owned the plant facility on which Southern Bell Telephone and Telegraph Company conducted its operations. *Id*. at 541. A Fabric Services personnel manager ordered a Southern Bell employee at this plant to remove Union supporting insignia on his pocket protector. *Id*. Fabric Services defended itself against the alleged ULP charge by relying entirely and solely on the grounds that it cannot be found to have violated Section 8(a)(1) because it was not the affected employee's employer. *Id*. The Board held that Fabric Services was liable because it was in a position of "sufficient control" to directly interfere with the employee's ability to show such support while performing his work. *Id.* at 542.

Thus, where conduct would be unlawful under RCW 41.80, an employer commits a ULP by accomplishing the same unlawful activity through a third party. Such behavior that is indisputably prohibited if undertaken by an employer is likewise unlawful when performed by the Foundation, whether as an independent entity or as an employer's proxy. Here, the Foundation seeks to interfere with the protected relationship between Local 117's represented bargaining unit members and their collective bargaining representative, Local 117, in a manner that is prohibited of the State by RCW 41.80, namely to disparage, discredit, ridicule, and/or undermine Local 117 and attempt to coerce employees to refrain from becoming or remaining a

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member of Local 117. Such behavior would indisputably be prohibited by RCW 41.80 if undertaken by an employer; it is likewise unlawful when performed by the Foundation. Even if the State does not mean to interfere in the employee's relationship with Local 117, such intent is irrelevant; the effect is the same: to undermine the union's relationship with the workers it represents and to discourage union activity. In short, the State would participate in and commit an interference ULP by facilitating a third party to accomplish what would be unlawful if done by the employer itself, and the Foundation's use of the requested documents to disparage, discredit, ridicule, or undermine Local 117 are prohibited insofar as they violate the statutory mandate which creates employee rights to engage in collective bargaining free from interference.

b. The Disclosure Would Violate State Laws On The Use Of State Resources.

By disclosing these employees' work email addresses, the State would be engaging in misuse of state resources in violation of the law, and would essentially be encouraging its employees to do the same. Under RCW 42.52.160(1) and RCW 42.52.180(1), work email addresses issued by the State of Washington, along with state information such as employee lists, are considered to be state resources. Under RCW 42.52.180, no state officer or state employee may use or authorize the use of state resources, "directly or indirectly," for the purpose of support or opposing a ballot proposition or a campaign for election of a person to an office.

Similarly, WAC 292-110-010 explains that no state officer or state employee may use or authorize the use of state resources for a prohibited purpose, such as for the purpose of "supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to, a private business, or a political party, or supporting, promoting the interest of, or soliciting for a nonprofit organization" without the authorization of an agency head or designee. Even then, such authorization is *expressly prohibited* for any purpose that would assist a candidate's campaign or for the promotion of or opposition to a ballot proposition.

The Foundation, both in its public statements and, more importantly, on its website, routinely advocates for candidates for office that align with its views, just as it advocates against

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candidates who are supported by Union political action committees ("PACs"). *See, e.g.*, Iglitzin Dec., ¶ 11, Ex. K. It also advocates for "right to work" ballot propositions that it attempts to enact in various cities and counties around the state. Iglitzin Dec., ¶¶ 11-12, Exs. J, L.

Allowing such an organization to use public resources to share such a link would violate the laws on the use of state resources. For example, in Executive Ethics Board Advisory Opinion 04-01, state agencies are cautioned against posting links on their own websites to websites run by private entities that advocate for or against state ballot initiatives or political candidates, unless required to do so by contractual obligation. Iglitzin Dec., ¶ 13; Ex. M. The opinion goes on to advise that using state facilities to electronically distribute articles and opinions that discuss public office candidates or ballot measures could result in an indirect use of facilities to support political activity, and therefore the agency should avoid distributing such material; the same applies to electronic links, as "providing a direct electronic link to a private web page which contains materials and advertisements that support, or oppose, passage of a ballot initiative would also violate RCW 42.52.180." *Id.*

Ultimately, the disclosure of email addresses to the Foundation would authorize the use of state resources to send employees, using their state-issued email addresses, on their state computers, to websites that support (or oppose) a range of candidates and support ballot propositions favored by the Foundation—an outside organization with no contractual ties to either State Agency. Such a disclosure is not permitted under any state law.

C. LOCAL 117 HAS A WELL-GROUNDED FEAR OF IMMEDIATE INVASION OF ITS RIGHTS.

Local 117 has a well-grounded fear of an immediate invasion of its rights. The State has informed Local 117 that they intend to disclose the information requested in its entirety. Once the information has been disclosed, there is no way of retrieving it or otherwise undoing the disclosure. *NW. Gas Ass'n v. Utils. & Transp. Comm'n*, 141 Wn. App. at 121-122.

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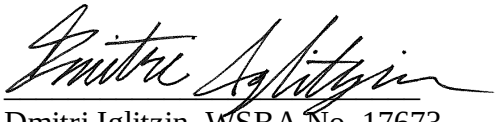
D. THE DISCLOSURE LOCAL 117 SEEKS TO ENJOIN WILL RESULT IN ACTUAL AND SUBSTANTIAL INJURY THAT TIPS THE BALANCE OF ANY HARDSHIP IN THE UNION'S FAVOR.

As set forth above, Local 117 has also met this prerequisite for injunctive relief. Local 117 would be injured by the Foundation's efforts, with the apparent imprimatur of the State, to interfere with, restrain or coerce employees regarding their union representation generally and their relationship with Local 117 in particular. Furthermore, the misuse of state resources will inevitably lead to employees being embroiled in issues at work arising from the use of state resources to access whatever links the Foundation improperly sends to their state email addresses, which will lead to even more instances where Local 117 will be helping employees facing discipline by the State on disciplinary or ethics commission—which is all avoidable if the State does not follow through with this unlawful disclosure. Local 117 would also be injured through the loss or diminishment of members if the Foundation obtains the requested documents.

VI. CONCLUSION

For the foregoing reasons, Plaintiff asks this Court to issue a preliminary injunction restraining DES and the DOC from releasing documents containing the requested information, pending a permanent injunction hearing in this matter.

RESPECTFULLY SUBMITTED this 6th day of May, 2016.



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DECLARATION OF SERVICE

I, Jennifer Woodward, hereby declare under penalty of perjury under the laws of the State of Washington that on May 6, 2016, I caused the foregoing Plaintiff's Motion for Preliminary Injunction to be electronically filed with the Clerk of the Court using the Thurston County e-Filing system, and caused a true and correct copy of the same to be sent via electronic per agreement of counsel, to the following:

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SIGNED this 6th day of May, 2016, at Seattle, Washington.

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